

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH AURANGABAD
ORIGINAL APPLICATION NO. 622 of 2016 (D.B.)

- 1) Manik S/o Tukaram Takalkar,
Aged about 65 years, Occ. Retired,
R/ at N-11, B-21/4, HUDCO,
T.V. Centre, near Datta Mandir,
Aurangabad.
- 2) Karbhari S/o Vithalrao Bhokre,
Aged about 60 years, Occ. Retired,
R/at : Rajiv Gandhi Nagar,
Plot no.47, N-2, CIDCO,
Thakre nagar, Aurangabad.
- 3) Mirza Itbar Gani Baig,
Aged about 67 years, Occ. Retired,
R/at : Rahemaniya Colony,
Galli no. 9-A, H.No. 8/2488,
Kiradpura, Aurangabad.
- 4) Madhav S/o Sahebrao Bhalerao,
Aged about 66 years, Occ. Retired,
R/at : N-12, G 69, Swami Vivekanand
Nagar, HUDCO, Aurangabad.
- 5) Mohd. Mohsin Mohd. Yasin Shaikh,
Aged about 60 years, Occ. Retired,
R/at : Holi Galli, Sillod tAl Sillod,
Dist. Aurangabad.
- 6) Chagan S/o Sandu Ghusinge
Aged about 60 years, Occ. Retired,
R/at : Plot no.38, Survey no. 51/2,
Balaji nagar, Pisadevi Road, Harsool,
Tq. and Dist. Aurangabad.
- 7) Balkrushna S/o Shankarao Kulkarni,
Aged about 61 years, Occ. Retired,
R/at : Osmanpura, Aurangabad.

- 8) Bhaurao S/o Mainaji Sapkal,
Since died through LRs.
Nirmalabai W/o Bhaurao Sapkal,
Aged about 58 years, Occ. Housewife,
R/at : Sillod, Tal. Sillod, Dist. Aurangabad.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
(Copy to be served on Presenting Officer
of the State of Maharashtra Administrative
Tribunal, Aurangabad).
- 2) The Superintendent of Engineer,
Public Works Department,
Aurangabad.
- 3) The Executive Engineer,
Public Works Department,
Aurangabad.
- 4) The Director,
Accounts and Treasures,
New Government Kuteer nos. 15 & 16
Plot no.176 Free Press General Marg,
Mumbai-021400.
- 5) The Joint Director,
Accounts and Treasures,
Aurangabad, near Collector Office,
Aurangabad.
- 6) The Accounts Officer,
Accounts and Treasures,
Pay Verification Unit,
near Collector Officer,
Aurangabad.

Respondents

Shri R.P. Bhumkar, Advocate for the applicants.

Smt. P.R. Bharaswadkar, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION NO. 643 of 2016 (D.B.)**

Govind Yadavrav Bharsakhle,
Age : 62 years, Occ: Retired,
R/at : Plot no.100 Mhada Colony,
Ramkrushna Colony, Shahanurmiya Darga Road,
Osmanpura, Dist. Aurangabad.

Applicants.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
(Copy to be served on Presenting Officer
of the State of Maharashtra Administrative
Tribunal, Aurangabad).
- 2) The Superintendent of Engineer,
Public Works Department,
Aurangabad.
- 3) The Executive Engineer,
Public Works Department,
Aurangabad.
- 4) The Director,
Accounts and Treasures,
New Government Kuteer nos. 15 & 16
Plot no.176 Free Press General Marg,
Mumbai-021400.
- 5) The Joint Director,
Accounts and Treasures,
Aurangabad, near Collector Office,
Aurangabad.
- 6) The Accounts Officer,
Accounts and Treasures,
Pay Verification Unit,
near Collector Officer,
Aurangabad.

Respondents

Shri R.P. Bhumkar, Advocate for the applicants.

Smt. P.R. Bharaswadkar, Id. P.O. for the respondents.

Coram :- J.D. Kulkarni, Vice-Chairman (J)
AND
P.N. Dixit, Member (A).

COMMON JUDGEMENT

(Delivered on this 7th day of April,2018)

Heard Shri R.P. Bhumkar, learned counsel for the applicants and Smt. P.R. Bharaswadkar, learned P.O. for the respondents.

2. Both these matters are being disposed of by this common order as the issue involved in both the O.As. is similar.

3. The applicants got retired as Civil Engineering Assistant (in short 'CEA') and admittedly they were exempted from passing the qualifying professional examination which is required to be cleared for grant of pay scale of Junior Engineer. Vide G.R. dated 08/06/1995 the Government of Maharashtra took a decision that those persons who are working under the Government service and who have completed 45 years of age shall be exempted from passing divisional examination for higher pay scale in view of the recommendation by the Sukhatankar Committee. The applicants were accordingly exempted from passing examination and were given benefit of

'Ashvashit Pragati Yojana' and the scale of Junior Engineer was made applicable to the applicants. A circular in this regard was issued on 23/08/2010.

4. Some of the employees like applicants approached the Hon'ble High Court by filing Writ Petition no.5182/2012 and the group of Writ Petitions bearing nos. 1495/2014 with 1496/2014 with 1748/14 with 5614/2013 and with 5695/2013. The said writ petitions were decided by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur. The Writ Petition no.5182/2012 in case of **Narendra N. Gedam Vs. Zilla Parishad, Amravati & Ors.** was disposed of vide order dated 30/01/2014 and it was held that the Petitioner therein was entitled to pay scale of Junior Engineer upon completion of 12 years service on the post of Mistri (Grade-I). Revision of pension shall also be made accordingly along with arrears. Similar decision was taken by the Hon'ble High Court in group Writ petition nos. 1495/2014 & Ors. on 12/08/2014. The decision taken in all these Writ Petitions is as under :-

" The Petitions are allowed. It is held that the petitioners are entitled to pay scale of Junior Engineer upon completion of twelve years' service on the post of Mistri (Grade-I). Revision of pension payable to the petitioners shall be made within a period of three months from today. The arrears payable to the petitioners on account of difference of salary and difference of pension in accordance with what has been held hereinabove shall be paid to

the petitioner within a period of six months from today. In the facts and circumstances of the case, no order as to costs.

5. Subsequent to the orders passed by the Hon'ble High Court in various Writ Petitions as referred above, the respondent no.2, Superintending Engineer, P.W.D., Aurangabad was pleased to pass the order granting pay scale of Rs.5500-9000 to the applicants treating them CEA from the date of attaining the age of 45 years and accordingly the benefit of time bound promotion was also given to the applicants in the pay scale of Junior Engineer. The Government of Maharashtra has also issued G.Rs. granting exemption from the professional examination as per the G.Rs. dated 08/06/1995 and 23/08/2010. The applicants' pension, however, have not been revised as per the said decision.

6. According to the applicants, the respondent no.5, The Joint Director of Accounts and Treasures, Aurangabad has issued one letter to the Director, Accounts and Treasures, Mumbai (R/4) on 28/12/2015 and on 04/04/2016. These letters are at Annex-10 and Annex-11 respectively and are filed on record at P.B. page nos. 77 to 80 (both inclusive). Instead of revising the pension of the applicants the Assistant Director, Accounts and Treasures, Aurangabad sought guidelines from the Director, Accounts and Treasures, Mumbai. According to the applicants the respondent i.e. Assistant Director has no authority to deny the benefit of the pay scale to the applicants in

spite the fact that the applicants are exempted from appearing professional examination as per the rules and the Government has already exempted them from appearing such examination. The applicants have therefore claimed following reliefs:-

“(B) In view of the above facts and circumstances, this Hon’ble Tribunal would be pleased / Sec. 19 of Administrative Tribunal Act,1985, quash and set aside the letter dated 28/12/2015 and 04/04/2016 passed by the respondent no.4 and to direct the respondents to grant the revise pension to the applicants.

“(C) In view of the above facts and circumstances, this Hon’ble Tribunal would be pleased / Sec. 19 of Administrative Tribunal Act,1985 to direct the respondents to re-fix and revise the pay scale of the applicants.”

7. The respondent nos. 1 to 3 have resisted the claim and stated that though the applicants have completed Training which was necessary for absorption in the cadre CEA during 1993-94, the Government in PWD published the Civil Engineering Assistants (Qualifying Examination / Departmental Examination & Training) Rules, 2001 vide notification dated 08/08/2001 and the eligibility for appearing for qualifying and departmental examination of CEA cadre is mentioned in para 10 of the said notification. There is a provision for exemption from passing above qualifying examination in the said rule. However from 01/01/1989 to 06/12/2001 there was no provision for exemption from passing qualifying examination after attaining the

age of 45 years. It is stated that the applicants were never absorbed in the cadre of CEA. It is stated that erroneous letters and orders of their absorption have been passed w.e.f. 1993-94 and these orders were not according to rules and therefore those letters were cancelled vide circular dated 28/10/2015. It is stated that even though the Superintending Engineer, Public Works Circle, Aurangabad had issued the letters exempting the applicants, such letters were cancelled and action of the Superintending Engineer in issuing such letters was illegal and was not according to the rules. It is further stated that as per the G.Rs. dated 01/11/1977, 10/07/1979, 28/11/1979 and 04/12/2008, general instructions were issued for exemption from departmental examination for the employees who attains the age of 45 years. This exemption is from passing departmental examination for promotion to the higher post. According to the respondents the applicants were absorbed in CEA cadre w.e.f. 1993-94 and not prior to that.

8. The respondent nos. 4 to 6 also tried to justify the orders. We have perused the record. The applicants in these cases have challenged the impugned letters which are at the Annexs-A-10 & A-11, i.e., 28/12/2015 and 04/04/2016. It is material to note that these letters are nothing but letters requesting guidance from the Director of Accounts and Treasures, Mumbai (R/4). It seems that the Assistant Director of Accounts and Treasures, Aurangabad has only claimed

direction as to what pay scale shall be made applicable to the employees like applicants and from what date. They have also requested the Director of Accounts and Treasures to state as to whether the pay scale of Rs.5500-9000 shall be fixed or not. The some and substance of the guidance claimed in letter dated 28/12/2015 (Annex-A-10) is as under:-

^I nj i d j . k h e k - l o k P P k U ; k ; k y ; k P ; k U ; k ; f u . k z ; k P ; k v u q k a k u s e g j k " V " k k l u k u s ' k k l u f u . k z f u x i e r d s y s y s v k g r - r n e a r j o G l o G h l k o z t f u d c k a k d k e f o H k k x k d M u o s o x G s v k ' k ; k p s i = f u x i e r > k y s y s v k g r - R ; k e G s f o H k k x k d M u o r u f u f ' p r h o i ; k z k u s i F k d k d M u i M r k G . k h l f o y e > k y s y k v k g s v k r k o f j y i e k . k s i M r k G . k h d j r k a u k 1 / 2 m D r f u ; f e r i n k o j r k f = d i f ' k { k . k i w k z d Y ; k p h u k n l o k i p r d k r u k n o q u i f ' k { k . k l a Y ; k P ; k n q & ; k f n o l k i k l u L F k i R ; v f H k ; k f = d h l g k ; d i n k o j l e k o s k u d # u o ; k p h 4 5 o " k z i q k z > k Y ; k o j v g r k d k j h i j h { k r u l W n s k s 1 / 2 1 / 2 L F k i R ; v f H k ; k f = d h l g k ; d i n k o j l e k o s k u k i p h z f u ; f e r i n k o j f n y s y h d k y c / n @ v k ' o k f l r i x r h ; k s t u k l { k e i k / k h d k j h ; k P ; k L o k { k j h u s j n n d # u l q k j h r d k y c / n @ v k ' o k f l r i x r h ; k s t u k d f u " B v f H k ; a r k ; k i n k l u r h P ; k i n k r o r u J s k h # - 1 6 4 0 & 2 9 0 0 @ 5 5 0 0 & 9 0 0 0 e / ; s e a t j d # u o r u f u f ' p r h d j . k s ; k n k u e q k k o j v M p . k h m n H k o r v k g r - l n j i d j . k r c g r k a k y k H k / k j d l o k f u o r r > k y s y s v k g r v F k o k u t h d P ; k H k f o " ; k r l o k f u o r r g k s k j v l Y ; k u s i M r k G . k h c k c r i d a h n c k o r a o k i j y s t k r v k g s R ; k e G s R o j h y e k x h ' k u f e G . ; k l f o u r h v k g s **

9. As per letter dated 04/04/2016 (Annex-A-11) the following queries were made and guidance was sought as under :-

- 1- o j h y i = k r h y e p n k d z 2 c k c r i q u ' p e k x h ' k u d j . ; k p h f o u r h d j . ; k r ; s v k g s i L r q i d j . k r T ; k d e p k & ; k p s l e k o s k u d k y c / n i n k l u r h i w h p > k y s y s g k s s R ; k a u k R ; k i p h z f n y s y h d k y c / n i n k l u r h v k i k s v k i j n n g l o b y f d o k d l s \
- mnk-1- d e p k & ; k p k t l e f n u k a d 1 0 @ 1 0 @ 1 9 5 4 o i F k e f u ; p r h e k x z f y i h d E g . k u d k ; D ; ; h v k L F k i u k ; k i n k o j # t w
- 2- d e p k & ; k l i w h z f n y s y h d k y c / n i n k l u r h f n u k a d 1 @ 1 2 @ 1 9 9 5 -
- 3- o ; k p h 4 5 o " k z i w k z > k Y ; k p k f n u k a d 1 0 @ 1 0 @ 1 9 9 9 -

4- I kozt fud clakdke foHkxkpk 'kk-fu- uq kj i f'k{k.k l a Y; kP; k nq & ; k fnoI ki kl u
LFki R; vfhk; kf=dh l gk; d i nkoj l ekosku fnukd 1@12@1993-

5- I nj depk& ; kl o; kph 45 o"lz i qlz >KY; kP; k fno'lh Eg.kt.p 10@10@1999 jksth
dfu"B vfhk; ark i nkph oruJskh i phph dk; D; ; h vkLFki uojhy l ok fopjkr ?kou eatj
dsyysih vlgS

R; keGs i nkh fnukd 1@12@1995 jksth fnyssih dkyc/n i nkburh #-4000&6000 ; k
oruJskhr jnn d#u fnukd 10@10@1999 jksth fnyssih 5500&9000 ; k ojh"B
oruJskhr dsyysih oru fuf'prh vuks djkosfobk dl s\ di ; k ; kckcr ekxh'ku ogkos
gh fourh**

10. Thus in fact by these letters no final decision has been taken against the applicants nor any effective steps are taken and the Assistant Director of Account and Treasures has only sought guidelines from the higher authority. There is nothing on the record to show that the Director of Accounts and Treasures has taken any adverse decision against the applicants.

11. Perusal of the G.R. dated 23/08/2010 shows that the CEA who have completed the age of 45 years and who were exempted from qualifying examination which was required to be cleared for getting pay scale of Junior Engineer. The Hon'ble High Court has also held that the employees like applicants were entitled to pay scale of Junior Engineers upon completing 12 years' service on the post of Mistri (Grade-I) and revision of pension shall be made in respect of such employees. There is nothing on the record to show that the applicants were held not liable for such pay scale and in fact they

have been granted pay scale as such and got retired on such pay scale. In such circumstances when there was no prohibition to revise the pay scale of the applicants there was no other way for the respondents, but to fix their revised pension. The guidelines have been sought by the Assistant Director of Accounts and Treasures vide letters dated 28/12/2015 and 04/04/2016 and till today no steps are taken by the Director of Accounts and Treasures on such letters. Even for argument sake, it is accepted that prior to notification of the rules, there was no provision for exemption from qualifying examination to those employees who have attained the age of 45 years, still admittedly such exemption have been granted by the Government and G.R. granting exemption does not discriminate employees. Considering these aspects, we feel that there is no need to quash the letters dated 28/12/2015 and 04/04/2016 issued by respondent no.4 as no adverse action has been taken on such letters. However, there is need to direct the respondents to take decision on these letters and to revise the pension of the applicants if cases of applicants are covered by the Judgment of Hon'ble High Court with cases cited supra. Hence, the following order :-

ORDER

- (i) The O.A. is partly allowed.

- (ii) The respondent no.4, i.e., the Director of Accounts and Treasures, Mumbai is directed to take decision on the recommendation letters dated 28/12/2015 and 04/04/2016 within a period of three months from the date of this order and to take further decision to revise applicants' pension accordingly if covered by the decision of Hon'ble High Court in Writ Petition no.1495/2014 as cited supra. No order as to costs.

(P.N. Dixit)
Member (A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 07/04/2018.

dnk.